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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/805,510	03/13/2001	Hans-Peter Weitzel	U-Wp-5577 Wacker	1883

7590 05/03/2002

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EXAMINER

REDDICK, MARIE L

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 05/03/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.



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EXAMINER

REDDICK, MARIE L

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Office Action Summary

Application No.

09/805,510

Applicant(s)

HANS-PETER WEITZEL

Examiner

Judy M. Reddick

Art Unit

1713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03/13/01;10/01/01.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3 & 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Priority

- 1) ***Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.***

Information Disclosure Statement

- 2) ***The information disclosure statements filed 03/13/01 & 10/01/01 have been considered, with the exception of Document AR, not a part of the cited documents, and placed in the application file.***

Claim Rejections - 35 USC § 112

- 3) ***The following is a quotation of the second paragraph of 35 U.S.C. 112:***

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- 4) ***Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.***

A) ***The recited "vinyl ester polymers" per claims 1, 3 and 11 constitutes indefinite subject matter as per it not being readily ascertainable as to the number of polymer intended.***

B) ***The recited "ethylenically unsaturated monocarboxylic" per claim 2 is absent "acids".***

C) ***The recited "including their anhydrides" per claim 2 constitutes indefinite subject matter as per it not being readily ascertainable as to the exact meaning of the term "including", in this context.***

D) The recited "and their salts" per claim 2 constitutes indefinite subject matter as per it not being readily ascertainable if such is intended to qualify the "sulfonic acids" only or the other recited species also.

E) The recited "of claim" per claims 2, 7-11 and 18-20, "claimed in claim" per claims 3, 6, 16 and 17 and "as claimed in" per claims 4 and 12-15 engenders claim language inconsistency.

F) The recited "vinyl acetate with at least one copolymerizable vinyl ester copolymer" per claims 3 and 11 engenders non-art recognized subject matter.

G) The recited "vinyl acetate with at least one copolymerizable vinyl ester and ethylene" per claims 3 and 11 constitutes indefinite subject matter as per it not being readily ascertainable as to if monomers or copolymers are intended.

H) The recited "vinyl ester-acrylic ester ethylene" per claims 3 and 11 constitute indefinite subject matter as per it not being readily ascertainable as to if monomers or copolymers are intended. Further, assuming "copolymers" are intended, a hyphen should be inserted between "ester" and "ethylene".

I) The recited "protective colloid present" per claim 4 constitutes indefinite subject matter as per said phrase housing redundant subject matter.

J) The recited "a partially hydrolyzed polyvinyl alcohols" per claims 5, 14 & 15 engenders a grammatical deficiency.

K) The recited "adhesives" per claim 9 should read "adhesive" so as to engender claim language clarity.

L) The recited "powders" per claims 16 and 17 should read "powder" so as to engender claim language clarity.

M) The recited "at least one auxiliary monomer unit" per claim 2 constitutes indefinite subject matter as per it not being readily ascertainable as to how such further limits the antecedently recited "auxiliary monomer units".

Claim Rejections - 35 USC § 101

5) 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6) Claim 5 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. "Use of" is not a statutory category of inventions, only processes with steps are patentable.

Claim Rejections - 35 USC § 102

7) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9) *Claims 1-20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Schulze et al(U.S. 5,49,665).*

Schulze et al disclose and exemplify water- redispersible dispersion powder compositions, useful in construction materials, adhesives, mortars, paints, etc., derived from polyvinyl alcohol-stabilized vinyl acetate-ethylene(1 to 40 wt.%) aqueous dispersions wherein, the polyvinyl alcohol component is governed by a degree of hydrolysis of 85 to 94 mol % and a Hoppler viscosity of 2 to 40 MPa.s, antiblocking agents, polypropylene glycol and other optional, conventional additives. See, e.g., the Abstract, col. 2, lines 26-67, col. 3, lines 1-15 and 45-67, col. 4, lines 1-49, the Runs and Claims of Schulze et al. Schulze et al therefore anticipate the instantly claimed invention with the understanding that the components of the polymer powder of Schulze et al overlap in scope with the components of the instantly claimed polymer powder, in both content and character.

As to the dependent claims, the limitations are either disclosed in Schulze et al, suggested in Schulze et al or would have been obvious to the skilled artisan and with a reasonable expectation of success.

Claim Rejections - 35 USC § 102

10) *The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:*

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

11) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12) Claims 1-20 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Schilling et al (U.S. 5,932,647).

Schilling et al disclose and exemplify water-redispersible polymer powder compositions, useful as wood adhesives, derived from a) 70 to 90 wt.% of a polyvinyl alcohol-stabilized vinyl ester copolymer wherein, said vinyl ester copolymer includes about 0.05 to 10 wt.% of auxiliary comonomers such as (meth)acrylic acid, acrylamide, vinylsulfonic acid, etc. and said polyvinyl alcohol has a content of 70 to 85 mol% of vinyl alcohol units and is used in an amount up to 4 % by weight and b) 10 to 30 wt.% of at least one fully hydrolyzed vinyl alcohol homopolymer or copolymer and optionally c) further conventional additives. See, e.g., the Abstract, cols. 2-6, the Runs and Claims of Schilling et al. Schilling et al therefore anticipate the instantly claimed invention, in both content and character.

As to the dependent claims, the limitations are either disclosed in Schilling et al, suggested in Schilling et al or would have been obvious to the skilled artisan and with a reasonable expectation of success.

Claim Rejections - 35 USC § 102

13) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

14) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15) Claims 1-20 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Geissler(U.S. 6,331,587).

Geissler discloses and exemplifies polyvinyl-stabilized vinyl ester copolymer aqueous dispersions and water-redispersible powders therefrom, useful in modifying building materials such as tile adhesives, plasters, mortars, etc., wherein, the polyvinyl alcohol is governed by a degree of hydrolysis of 80 to 98 mol % and a content of 2 to 15 wt.% and the content of comonomer in the vinyl ester polymer is up to 50 wt.% for

monomers such as ethylen and up to 5 wt.% for monom rs such as ethylenically unsaturated carboxylic acids, etc. See, e.g., the Abstract, cols. 2-4, the Runs and Claims of Geissler. Geissler therefore anticipates the instantly claimed invention, in both content and character.

As to the dependent claims, the limitations are either disclosed in Geissler, suggested by Geissler or would have been obvious to the skilled artisan and with a reasonable expectation of success.

Conclusion

16) The prior art to JP 409176602 A is cited as of interest in teaching redispersible dispersion powders based on a polyvinyl alcohol/vinyl ester copolymer combination and is considered merely cumulative to the prior art supra.

17) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Judy M. Reddick whose telephone number is (703) 308-4346. The examiner can normally be reached on Monday-Friday, 6:30 A.M.-3:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wu David can be reached on (703) 308-2450. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3599 for regular communications and (703) 305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2381.

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JMR
February 27, 2002